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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Implementation of the Local)
Competition Provisions in the)
Telecommunications Act)
of 1996)

CC Docket No. 96-98

PETITION FOR PARTIAL RECONSIDERATION,
OR IN THE ALTERNATIVE, CLARIFICATION

Submitted by:

PILGRIM TELEPHONE, INC.

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September 30, 1996

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PETITION FOR PARTIAL RECONSIDERATION,
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Pilgrim Telephone, Inc., through its attorneys, files this petition for partial reconsideration, or in the alternative, clarification, in the above-referenced proceeding. Pilgrim did not file Comments or a Reply in the original proceeding, but as an interexchange carrier and information provider relying on the availability of network elements for resale, it is an affected party for purposes of filing for reconsideration.

Pilgrim appreciates the Commission's efforts to ensure the non-discriminatory availability of necessary network elements for the competitive provision of communications services by resellers, non-facilities based carriers and providers, new entrants and smaller entities in the marketplace. Pilgrim seeks reconsideration or clarification of a number of issues addressed by the Commission in its Notice of Proposed Rule Making (NPRM).^{1/}

^{1/} Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket no. 96-98, Notice of Proposed Rule making, -- FCC Rcd --- (1996). The NPRM was issued in response to the new requirements for
(continued...)

I. CONFORMITY OF REQUIREMENTS

Pilgrim notes that the Commission has numerous rule making proceedings pending simultaneously, many of which have common elements, or which will produce interrelated requirements, obligations and rights. Examples of such interrelated rule makings include this proceeding, the proceeding on pay-per-call, CC Docket Nos. 96-146 and 93-22; and telemessaging, among others. Pilgrim is concerned that in the context of these various rule makings, important concepts, rights and obligations of parties may be inconsistent when the final product of each are read together.

As a consequence, without specifically restating all of the issues raised in other proceedings, Pilgrim incorporates by reference its comments and reply comments made in the pay-per-call rule making, to the extent that such comments and replies call for equal and non-discriminatory access to the services of local exchange carriers, or raise issues otherwise implicated by or relevant to this proceeding.

II. CLARIFICATION OF FINDINGS AND REQUIREMENTS

In addition to issues that Pilgrim has raised in other proceedings, Pilgrim also requests that the Commission reconsider, or clarify to the extent necessary, four specific issues addressed in the Commission's order. These relate to non-discriminatory access to billing and collection services, call

¹/ (...continued)
interconnection and access, inter alia, imposed by the 1996 Amendments (Amendments) to the Communications Act of 1934 (Act).

related databases and billed name and address. Pilgrim also seeks further clarification and specific guidance regarding a number of past negotiation practices of carriers which would no longer be permitted under the Act or rules.

A. Provision of Billing and Collection Services

Pilgrim notes that the Commission has already recognized the necessity for access to the incumbent LECs' billing and collections systems, and has mandated the provision of these services. See Section 51.313(c). Pilgrim is concerned, however, that the LECs may continue to use various means for either denying the provision of billing and collection, or may make the terms and conditions of service so prohibitively onerous as to make them impractical.

The Commission has found that billing and collection is essential to small and entry providers of telecommunications services. Separately, in a number of proceedings, the Commission has noted the great expense involved in the creation of a billing and collection system. Access to these systems, if denied, would effectively prevent the entry on competitively neutral terms to new competitive carriers, contrary to clear congressional intent.

In order to more clearly effectuate the intent of Congress, Pilgrim requests that the Commission also define the provision of billing and collection to be a "network element," as defined in Section 51.5 of the Commission's rules, 47 C.F.R. § 51.5, in order to provide more comprehensive protection to small and entry carriers. Pilgrim also notes that the Commission has

stated that to the extent that a carrier provides telecommunications services and information services, it has mandatory access to both network elements and billing and collection services, and may use these in the provision of both communications and information services. Pilgrim assumes that for purposes of these requirements, the local exchange carriers would be prohibited from inquiring into or requiring information regarding the relative levels of such traffic, and that so long as the carrier was a bona fide provider of communications services, the ability to use network elements and billing and collection services for all services provided by the carrier would be mandated.

Separately, in order to further prevent discrimination in favor of themselves, Pilgrim seeks clarification that to the extent that a local exchange carrier provides a service, including information service, or access to such services, and provides network elements or billing and collection to itself or others, it must provide these same items to all parties on a non-discriminatory basis. Historically, carriers have provided certain services to themselves, but denied them to competing carriers based on perceptions of the character of the service. Carriers also have placed extreme initial costs on the provision of such services. The Commission should affirmatively and aggressively seek to end such anti-competitive and discriminatory conduct.

B. Access to Call Related Databases

In other proceedings, Pilgrim has called for access to a number of call databases that the local exchange carriers have been maintaining on a proprietary basis. To the extent necessary, LECs should be required to place all network control, blocking and special billing information available to the local exchange company in LIDB or other commonly accessible databases for all carriers and information providers to access. This would not only satisfy the nondiscriminatory and pro-competitive provisions of the Act, but would also help promote the public policies behind the collection and use of these call databases.

Two of the primary call databases normally not provided to other carriers are 900 number blocks and international calling blocks. Both of these would seem to be covered under the Commission's language and requirements in Sections 51.5 Advanced Intelligent Network (AIN) and 51.319(c)(2) of the rules. Each of these would be very useful to carriers to help protect against various kinds of fraud, and to more completely recognize and honor consumers' wishes. With the wide variety of dialing patterns available for various services, it may not be possible for an interconnected carrier to realize that an international call is being placed over its network, but because the dialing pattern went around the proprietary block the LEC has in place, the carrier is not aware of the block and completes the call anyway. This leads to consumer frustration due to the fact that the consumers' wishes are not honored, and leads to the carrier

having to absorb the costs of the call when the customer refuses to pay for the call.

Pilgrim requests that the Commission emphasize the necessity for the provision of billing and collection on a non-discriminatory basis, and without regard to the service provided or the content or customers of the service. Only the provider of the service should be responsible to its customers and for the structure of the offering. The new competitive entrants cannot be placed in a position whereby they are subject to the editorial and censorship controls of the local exchange carriers and other parties who provide necessary elements.

C. Provision of Billed Name and Address

The provision of billed name and address to competitive carriers is also a key component to a fully competitive and non-discriminatory market. The Commission's rules appear to require access to this information. See Sections 51.5 and 51.319. this requirement, and its benefits, are illusory, however, unless it is provided on a real-time and non-discriminatory basis. Pilgrim requests that the Commission require that BNA and other network elements must be provided on a real time basis and at reasonable rates when requested.

Pilgrim also requests that the requirement of information provision be extended to the provision of access to the BNA and number directory services and other billing information for cellular users accessing the network.

D. Duty to Negotiate in Good Faith

Pilgrim also seeks clarification of the requirement to negotiate in good faith, and not restrict or limit the availability of network components or billing and collection, as set forth in Sections 51.301(c) and 51.309(a). In numerous situations, before negotiating access to network elements or billing and collection services, Pilgrim has been faced with unreasonable requests by carriers to provide detailed marketing plans, descriptions of the services to be provided, classes of customers to be served, description of target markets, transcripts of introductory and operator service information, copies of advertisements and other proprietary information.

The request for such proprietary information in the context of the 1996 Act and the rules adopted in the captioned proceeding would be in violation of the duty to negotiate in good faith and the prohibition on unreasonable restriction or limitations on services. A request for such information, in addition to being in express violation of the pro-competitive and open network policies of the Act and the rules, is also anti-competitive on its face. As the LECs have access to all traffic and revenue information, proprietary information would easily be used to compare traffic and billing data to marketing plans, services and target markets, and to evaluate the relative success of each.

Pilgrim notes that while these practices violate the rules as written, it requests that the Commission add these to the laundry list of prohibited practices in the rules to further

deter the LECs from the abusive and anti-competitive practices. Furthermore, Pilgrim believes that any request for proprietary information during service negotiations should be a per se violation of the rules, subject to rapid and severe enforcement by the Commission.

Pilgrim also requests that the Commission find that the listing of bad faith practices should not extend to just the negotiation phase or related to the purchase of service offerings, but also clarify that carrier threats of termination, breach or assessment of additional costs are also unreasonable and bad faith practices. Finally, Pilgrim requests that the Commission find that to the extent that carriers have engaged in such practices in the past, that any findings, actions, or conduct based in whole or in part on such conduct be found expressly void and inapplicable going forward.

III. CONCLUSION

In conclusion, Pilgrim requests that the Commission recognize the intent of Congress, and provide a level playing field for all parties. Pilgrim also requests that the Commission further clarify the scope and application of its rules to protect small and entry competitors from the market power and anticompetitive practices of some LECs.

Respectfully Submitted:



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